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August 11, 2005

**COMMENTS SUBMITTED ON BEHALF OF 8 SUPPLIERS OF ORGANIC SEED  
CONCERNING RECOMMENDATION BY CROPS COMMITTEE  
OF NATIONAL ORGANIC STANDARDS BOARD  
FOR GUIDANCE TO ACCREDITED CERTIFYING AGENTS  
AND ORGANIC PRODUCERS REGARDING ORGANIC SEED**

This statement is on behalf of the following companies that produce and/or distribute organically grown seed.

- Abundant Life Seed Company, Saginaw, Oregon
- Albert Lea Seed House, Albert Lea, Minnesota
- Blue River Organic Seed, Seward, Nebraska
- Genesis Seeds, Rehovot, Israel, and Boca Raton, Florida
- Great Harvest Organics, Atlanta, Indiana
- Seeds of Change, Santa Fe, New Mexico
- Snow Seed Company, Salinas, California
- Territorial Seed Company, Cottage Grove, Oregon

As we said in our prior statement on March 1, 2005, we thank the Crops Committee for developing this recommendation. We appreciate the personal efforts of Nancy Ostiguy, Chair of the Committee, Rose Koenig and Jim Riddle, Chair of the Board.

To summarize this recommendation very briefly, it would require that before a certifier could give a grower an allowance to use conventional seed, both the grower and the accredited certifying agent would need to follow a precise list of procedures to document the need for the allowance. The National Organic Program (NOP) needs to spell out such procedures so that certifying agents will grant allowances only after there has been a well-documented showing of need for the use of a conventional seed.

Since presenting Draft 1, dated January 18, 2005, at the last NOSB meeting in March 2005, the Crops Committee has made a number of modifications. One change was to strengthen the research section, now Section 3D in the new draft. We support this change.

However, the Committee has made **two other changes that we cannot support** and must strongly oppose.

1. **In Draft 1, Section 5C required that accredited certifying agents “maintain and annually submit...an up-to-date list of specific non-organic crop varieties permitted by each agency...” The new draft completely eliminates this requirement. We call for the Committee to restore this section. After we discuss overall the problems facing the implementation of the organic seed requirement, we will give our reasons in detail at the end of these comments.**
2. **In Draft 1, Section 5E required that if an operation did not meet “commercial availability” requirements for organic seed, the certifier could not certify that operation as organic and the operation could not sell or label its operations as “organic.” The new draft omits this section altogether. Likewise, we call for the Crops Committee to restore this section. We will give our reasons in detail at the end of these comments.**

### Background

The National Organic Program (NOP) requires that organic producers use organically grown seed. However, if organically grown seed is not commercially available in an equivalent variety, the producer may then request to the certifying agent that the producer be allowed to use a conventional untreated seed instead.

While many organic producers have begun using organic seed since the NOP was implemented in October 2002, many others have been applying for and receiving these allowances. Since a full range of seed in organic varieties is not yet available, it is still necessary to offer growers these allowances to use conventional seed in appropriate cases. However, the process for granting these allowances has not been consistent, predictable or transparent. In some crops where there is an adequate supply of organic seed, such as several varieties of corn in the Midwest, growers have obtained permission from their certifying agents to use specific varieties of conventional seed while organic seed of an equivalent variety has gone unsold.

As long as growers throughout the country will find it fairly easy to get allowances from their certifiers to use commercial instead of organic seed, this will discourage seed companies from entering the organic seed market, and the supply of organically grown seed will shrink. The Crops Committee recommendation addresses this urgent need for procedures that require a well-documented showing of need for the use of a conventional seed.

### Recommendation Would Affect Not Only Growers But Also Their Customers

In addition, this recommendation introduces a major step, in Section 4, that, over time, should eliminate much of the need for allowances in the first place.

It would require buyers of organic agricultural products to require or provide organic seed or planting stock to growers. If the buyer wishes to require a grower to use a particular variety that is not available as organic, the buyer would need to furnish information to justify this choice. Thus this recommendation involves the growers' customers as well as the growers in the organic seed requirement.

This addresses a fundamental problem with the current organic seed requirement. The problem is that organic seed costs the grower more than conventional seed, but once the grower has invested in organic seed, the price the grower receives from customers does not reflect this added value. A grower's customer might typically specify that the grower use a particular hybrid seed, but seldom if ever does a customer require in a purchase order that the grower must use organic seed. Thus growers see no way to recoup the higher cost of organic seed from their customers. Growers have an economic incentive not to use higher priced organic seed and instead to seek allowances to use conventional seed if they can qualify.

This situation has stifled the growth of the organic seed market. The situation would change if the growers' customers would begin to require that all the organic growers with whom they deal use organic seed. This would increase both the quantity and the quality of organic seed that would be available to growers. If growers would have to use organic seed to meet their customers' specifications, there would be heightened demand in the market for organic varieties. This demand would extend to widely used favored hybrids. Until now these hybrids have not been available as organic seed, because there was no demand for them in organic production. Requiring growers' customers to ask growers to use organic seed would stimulate demand for these important seeds as organic.

Once demand for organic seed would be assured, the seed industry would provide the supply and consequently the price of organic seed would drop, just as prices for other organically grown commodities have dropped as supply has increased.

#### Ultimate Aim Is a Meaningful and Enforceable Organic Seed Requirement

The Crops Committee recommendation is a necessary first step to safeguard the integrity of the requirement to use organic seed. As the NOP implements these procedures, certifiers and growers should become more accountable in preventing abuses from the granting of allowances not to use organic seed. It is critical that the NOP back up these procedures by carrying out a diligent enforcement policy to insure compliance with the organic seed requirement. These procedures should assist the NOP in enforcing its regulations.

The Crops Committee recommendation also calls, in Section 1, for establishment of a national database of available organic seed. The organic seed sector of the industry has plans underway to begin this database within the next several months. In addition, organic seed suppliers want to address directly the problem of seemingly "open-ended" allowances granted on the basis that organic seed is not available in a given variety.

As long as allowances can be variety-specific and thus virtually open-ended, this makes it possible for many organic growers to avoid using organic seed. Understandably, this makes seed companies skeptical that the organic seed market will be firm enough for them to make major commitments to large-scale production. Some organic seed suppliers support a policy that once a crop has a sufficient number of varieties available organically, organic growers of that crop should then be limited by regulation to use only organic varieties. Imposing these limits on the use of conventional seed would require regulations, and thus there would need to be consensus reached on each crop by representatives of the seed industry and organic growers.

Even if this proceeds forward gradually on a crop-by-crop basis, this would bring much more certainty to the organic seed market. If a crop would be determined to have a sufficiently wide range of organic varieties available, organic growers of that crop would know that they could not ask for any allowances to use conventional seed. Suppliers of organic seed would know that they could then service that crop market without the possibility that growers could get allowances. In addition, once suppliers know that it would be possible for individual crops to reach the status when there would be no more allowances for conventional seed, this would give them an incentive to bring out more organic varieties in order to achieve “critical mass” in such crops. As for enforcement, a crop for which there were no allowances would establish a clear line between what would be allowed and what would not. This is what is lacking at present.

In new organic seed regulations in the European Union, there is a mechanism for growers and seed companies to form committees to assess jointly which crops would have enough organic seed available to justify a requirement that only organic varieties would be allowed. The Netherlands has been the leading country in the EU to adopt this. The Dutch Ministry of Agriculture, Nature and Food Quality has already published a list of 56 species for which no seed other than organically grown seed would be allowed. Organic seed suppliers in the United States are actively discussing this Dutch system as a model for progress here. We will keep the Board informed of the status of this proposal.

### Why We Call for Restoring Section 5C

Now we will turn to Section 5C of Draft 1 and why we want it restored in the new draft. As we have said above, the overall purpose of the Crops Committee recommendation is to make the granting of allowances by certifiers to growers more consistent, predictable and transparent. Section 5C was one of the key provisions of Draft 1 to help achieve this. We therefore oppose the removal of Section 5C from the current draft.

Under Section 5C, accredited certifying agents would be required to “maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each (certifying) agency....” Section 5C would have the following advantages:

1. Certifying agents are currently not accountable to the NOP or to the public with regard to the decisions they make to allow growers to use nonorganic seed. Section 5C would make them accountable and bring transparency to this process for the first time.

2. Certifying agents have important information at their fingertips on which seeds growers are using, and which are conventional rather than organic. This information could tell the seed industry which seed varieties are in demand among organic growers. This would enable the seed industry to supply organic versions of these varieties.

Because of this second advantage, in our previous comments we called for this information to be collected not simply annually, but monthly, since this would provide the seed industry with far more timely information it could use for marketing purposes.

We recognize that requiring certifiers to report this information will produce some additional paperwork. However, we do not see why this would be a heavy burden. Certifiers record this information in the normal course of approving individual organic system plans. All they would need to do is gather the various seed decisions from their existing files. As we have explained, having this data available on a timely basis is critical in order for the NOP to monitor compliance with the organic seed requirement and in order for organic seed suppliers to learn which varieties they should make available. These urgent needs should outweigh whatever slight inconvenience this will cause for certifiers.

#### Why We Call for Restoring Section 5E

Just as Section 5C was an integral part of Draft 1, Section 5E was also a key provision. Section 5E emphasized that it was up to the certifier to determine whether or not a farm operation not using organic seed had met the commercial availability requirements. Under Section 5E, if the farm operation did not meet these requirements, the certifier would not be able to certify the operation as organic, so that its products could not be legally sold or labeled as “organic.”

One could perhaps argue that Section 5E’s language is not necessary, because the certifier is already under a duty to enforce every existing NOP regulation, and this includes the organic seed requirement. However, the reason why the Crops Committee has developed such an extensive recommendation for organic seed is because the Committee has seen the special need for additional guidance when it comes to the organic seed requirement. The importance of Section 5E in this overall scheme is that it would send a clear message from the NOSB to the NOP that the NOSB regards the requirement to use organic seed as a standard that is just as important to a farmer’s certification as any other rule of organic farming.

The Crops Committee’s recommendation is serious and carefully written. Section 5E was fully consistent with the letter and the spirit of this recommendation, because it gave this recommendation the strong impact that the Crops Committee intended. We call for the Committee to restore Section 5E to the new draft.

#### Conclusion

Our group of organic seed supplier companies supports the current draft of the Crops Committee Recommendation for Guidance on Commercial Availability of Organic Seed, except for the following requested changes:

1. Restore Section 5C, which was in Draft 1 but deleted in the current draft. Section 5C would require certifying agents to “maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each (certifying) agency....”
2. In restoring Section 5C, require monthly rather than annual reports.
3. Restore Section 5E, which was in Draft 1 but deleted in the current draft. Section 5E would make it clear that if the farm operation does not use organic seed, and does not comply with the requirement to show lack of commercial availability, the certifier would not be able to certify the operation as organic, so that its products could not be legally sold or labeled as “organic.”